

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2321

Introduced by Assembly Member Nava

February 19, 2010

~~An act to amend Section 66427.5 of the Government Code, relating to land use. An act to add Article 3.5 (commencing with Section 84350) to Chapter 4 of Title 9 of the Government Code, relating to the Political Reform Act of 1974.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2321, as amended, Nava. ~~Land use; subdivisions; mobilehome parks. Political Reform Act of 1974: corporations.~~

The Political Reform Act of 1974 provides for the regulation of political campaign financing, including the reporting and disclosure of campaign contributions and expenditures. Under the act, elected officers, candidates for elective office, and campaign committees are required to file periodic campaign statements that disclose specified information for specified reporting periods, including the amount of contributions received, the amount of expenditures made, and the identities of donors and recipients of expenditures.

This bill would require a corporation that makes a contribution or expenditure for a political activity in the State of California, as defined, to prepare a report within 30 days after the close of the corporation's fiscal year containing specified information regarding all contributions or expenditures made by the corporation for political activities in the State of California during that fiscal year. The bill would further require the corporation to maintain records of those contributions or expenditures, including the report described above, for a period of not

less than 5 years, and to file a copy of the report with the Fair Political Practices Commission upon request of the Commission. In addition, the bill would give shareholders of a corporation the right to file a notice of objection to the corporation's use of the shareholder's invested funds for political activities in the State of California and would require the corporation, if a shareholder so objects, to return to the shareholder as a dividend his or her pro rata share of the funds expended for political activities. The bill would also create a civil cause of action that may be brought by any shareholder against a corporation that violates the above provisions or that makes a political contribution or expenditure that adversely affects the value of the corporation's stock.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subject offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

~~The Subdivision Map Act requires a subdivider, at the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, to avoid the economic displacement of nonpurchasing residents, as specified.~~

~~This bill would make a technical, nonsubstantive change to that law.~~

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~yes. State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) Corporations make substantial political contributions and
2 expenditures to support and oppose candidates, ballot measures,
3 political parties, and political causes. However, decisions to use
4 corporate funds for political contributions and expenditures are
5 usually made by corporate boards and executives, rather than the
6 shareholders who own the corporations.

7 (b) Shareholders have a right to know how corporations are
8 spending shareholder funds to make political contributions and
9 expenditures to support or oppose candidates, ballot measures,
10 political parties, and political causes.

11 (c) Most shareholders have no means by which they may learn
12 of, influence, or object to the political activities of the corporations
13 in which they have invested. Moreover, most shareholders have
14 no means by which they may demand reimbursement or demand
15 that their invested funds not be used to make political contributions
16 or expenditures to support candidates, ballot measures, political
17 parties, or political causes to which the shareholders are opposed.

18 (d) By limiting the extent to which corporate political
19 contributions and expenditures may be regulated, the United States
20 Supreme Court, through its decision in *Citizens United v. Federal*
21 *Election Commission* (2010) 130 S.Ct. 876, has increased the need
22 for greater accountability of corporations to their shareholders
23 with regard to political contributions and expenditures.

24 (e) The debate over whether the invested funds of shareholders
25 should be used for political activities without their consent is not
26 a new one. In 1905, President Theodore Roosevelt said, “All
27 contributions by corporations to any political committee or for
28 any political purpose should be forbidden by law; directors should
29 not be permitted to use stockholders’ money for such purposes.”

30 (f) It is the intent of the Legislature in enacting this act to protect
31 shareholders from having portions of their investments used for
32 political activities that the shareholders do not support.

33 SEC. 2. Article 3.5 (commencing with Section 84350) is added
34 to Chapter 4 of Title 9 of the Government Code, to read:

35
36 Article 3.5. Corporations

37
38 84350. For purposes of this article, the following terms have
39 the following meanings:

1 (a) “Ballot measure” means a constitutional amendment or
2 other proposition that is submitted to a popular vote at an election
3 by action of a legislative body, or that is submitted or is intended
4 to be submitted to a popular vote at an election by initiative,
5 referendum, or recall procedure, whether or not it qualifies for
6 the ballot.

7 (b) “Corporation” means any of the following:

8 (1) A publicly held corporation with shareholders.

9 (2) An entity in which a corporation with shareholders has an
10 equity interest.

11 (3) The parent corporation of a subsidiary or affiliate of a
12 corporation.

13 (c) “Objecting shareholder” means a shareholder who informs
14 the corporation that he or she does not wish the proportional share
15 of the value of his or her equity in the corporation to be
16 contributed, expended, or used in any way for political activities.

17 (d) “Political activity” means a contribution or expenditure
18 made to, or in support of or opposition to, a candidate, ballot
19 measure campaign, signature-gathering effort on behalf of a ballot
20 measure, political party, political action committee, issue advocacy
21 campaign, voter registration campaign, or any other political or
22 legislative cause.

23 (e) “Public corporation” means a corporation that files reports
24 pursuant to Section 13(a) or 15(d) of the Securities Exchange Act
25 of 1934, as amended (15 U.S.C. Secs. 78m(a), 78o(d)).

26 (f) “Shareholder” has the same meaning as set forth in Section
27 185 of the Corporations Code.

28 84351. A corporation that makes a contribution or expenditure,
29 directly or indirectly, for a political activity in the State of
30 California shall do all of the following:

31 (a) (1) Within 30 days after the close of the corporation’s fiscal
32 year, the corporation shall prepare a report entitled “Political
33 Contributions and Expenditures” describing all contributions and
34 expenditures made by the corporation for political activities in the
35 State of California during that fiscal year and provide a written
36 copy of the report to the corporation’s shareholders. The report
37 shall include all of the following:

38 (A) An explanation of why the corporation made contributions
39 or expenditures for political activities, the intended results of those

1 contributions or expenditures, and the anticipated benefits of those
2 contributions or expenditures to the corporation's shareholders.

3 (B) The date of each contribution or expenditure.

4 (C) The amount of each contribution or expenditure.

5 (D) The name of the person, candidate, committee, or political
6 party, or a description of the political or legislative cause, to which
7 each contribution or expenditure was made.

8 (E) If a contribution or expenditure was made for or against a
9 candidate, the office sought by the candidate and the political
10 party affiliation of the candidate.

11 (F) If a contribution or expenditure was made for or against a
12 ballot measure, a description of the ballot measure and an
13 explanation of whether the contribution or expenditure was made
14 in support of or opposition to the ballot measure.

15 (2) A public corporation is deemed to have complied with this
16 subdivision if it includes the report required by paragraph (1) in
17 its annual report to shareholders under a separate caption entitled
18 "Political Contributions and Expenditures."

19 (3) If the corporation maintains an Internet Web site, the
20 corporation shall post the report required by this subdivision on
21 its Internet Web site.

22 (b) Within 90 days after the close of the corporation's fiscal
23 year, the corporation shall notify each of its shareholders, in
24 writing, that the shareholder has the right to object to the use of
25 corporate funds equaling the proportional share of the value of
26 his or her equity in the corporation that were expended for political
27 activities in the State of California. The written notification shall
28 further inform the shareholder of the appropriate procedure for
29 registering an objection.

30 (c) The corporation shall give each shareholder not less than
31 60 days following receipt of the notification required by subdivision
32 (b) to file a notice that he or she is an objecting shareholder. A
33 shareholder who fails to file a notice of objection within the
34 timeframe established by the corporation is deemed to have
35 consented to the use of corporate funds equaling the proportional
36 share of the value of his or her equity in the corporation for
37 political activities in the State of California.

38 (d) Upon receipt of a notice of objection filed pursuant to
39 subdivision (c), the corporation shall calculate the objecting
40 shareholder's pro rata share of the contributions or expenditures

1 *made for political activities in the State of California in the*
2 *previous fiscal year and shall return that amount to the shareholder*
3 *in the form of a dividend. The objecting shareholder's pro rata*
4 *share shall be determined by dividing the total amount of*
5 *contributions and expenditures made in the previous fiscal year*
6 *by the number of outstanding shares, and multiplying the result*
7 *by the number of shares held by the shareholder.*

8 84352. *For purposes of Section 84351, a corporation is deemed*
9 *to make a contribution directly or indirectly for a political activity*
10 *only if the corporation knew or had reason to know that its funds*
11 *would be used to make a contribution or expenditure for a political*
12 *activity.*

13 84353. (a) *A corporation that makes a contribution or*
14 *expenditure for a political activity in the State of California shall*
15 *maintain records of that contribution or expenditure, including*
16 *the report required by subdivision (a) of Section 84351, for a*
17 *period of not less than five years.*

18 (b) *Upon request of the Commission, a corporation shall file*
19 *with the Commission a copy of each report produced pursuant to*
20 *subdivision (a) of Section 84351.*

21 84354. *No provision of Section 84351 shall be construed to*
22 *relieve a corporation of its obligations under any of the following:*

23 (a) *Section 604 of the Corporations Code, or a successor statute*
24 *or regulation.*

25 (b) *Any statute or regulation from another jurisdiction that*
26 *regulates the solicitation of proxies.*

27 (c) *In the case of a corporation with an outstanding class of*
28 *securities registered pursuant to Section 12 of the Securities*
29 *Exchange Act of 1934, as amended (15 U.S.C. Sec. 78l), the proxy*
30 *rules promulgated under that act.*

31 84355. (a) (1) *A violation of Section 84351 by a corporation*
32 *creates a civil cause of action against the corporation that may*
33 *be brought by any shareholder of the corporation.*

34 (2) *Notwithstanding Section 91000, a violation of Section 84351*
35 *is not a misdemeanor.*

36 (b) *A contribution or expenditure made by a corporation for a*
37 *political activity in the State of California that adversely affects*
38 *the value of the corporation's stock creates a civil cause of action*
39 *against the corporation that may be brought by any shareholder*
40 *of the corporation.*

1 (c) Reasonable attorney's fees and costs may be recovered for
2 any action brought pursuant to this section.

3 (d) The remedies provided in this section are in addition to any
4 other rights or remedies available under any other provision of
5 law.

6 84356. The provisions of this article are severable. If any
7 provision of this article or its application is held invalid, that
8 invalidity shall not affect other provisions or applications that can
9 be given effect without the invalid provision or application.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

19 SEC. 4. The Legislature finds and declares that this bill furthers
20 the purposes of the Political Reform Act of 1974 within the meaning
21 of subdivision (a) of Section 81012 of the Government Code.

22 SECTION 1. ~~Section 66427.5 of the Government Code is~~
23 ~~amended to read:~~

24 ~~66427.5. At the time of filing a tentative or parcel map for a~~
25 ~~subdivision to be created from the conversion of a rental~~
26 ~~mobilehome park to resident ownership, the subdivider shall avoid~~
27 ~~the economic displacement of all nonpurchasing residents in the~~
28 ~~following manner:~~

29 ~~(a) The subdivider shall offer each existing tenant an option to~~
30 ~~either purchase his or her condominium or subdivided unit, which~~
31 ~~is to be created by the conversion of the park to resident ownership,~~
32 ~~or to continue residency as a tenant.~~

33 ~~(b) The subdivider shall file a report on the impact of the~~
34 ~~conversion upon residents of the mobilehome park to be converted~~
35 ~~to resident-owned subdivided interest.~~

36 ~~(c) The subdivider shall make a copy of the report available to~~
37 ~~each resident of the mobilehome park at least 15 days prior to the~~
38 ~~hearing on the map by the advisory agency, if there is no advisory~~
39 ~~agency, by the legislative body.~~

~~(d) (1) The subdivider shall obtain a survey of support of the residents of the mobilehome park for the proposed conversion.~~

~~(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.~~

~~(3) The survey shall be obtained pursuant to a written ballot.~~

~~(4) The survey shall be conducted so that each occupied mobilehome space has one vote.~~

~~(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).~~

~~(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.~~

~~(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:~~

~~(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.~~

~~(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly~~

- 1 ~~percentage increase in the Consumer Price Index for the most~~
- 2 ~~recently reported period.~~

O